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State v. Wharton Appellant's Reply Brief Dckt. 44279

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	Supreme Court No. 44279
)	
vs.)	Elmore County District Court
)	Case No. CR-2014-3335
TRAVIS WHARTON,)	
)	
Defendant,)	
)	
and)	
)	
ALADDIN BAIL BONDS as agent for)	
AMERICAN CONTRACTORS)	
INDEMNITY COMPANY,)	
)	
Surety-Real Party in Interest-)	
Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND
FOR THE COUNTY OF ELMORE

HONORABLE JONATHAN MEDEMA
District Judge

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II. ARGUMENT IN REPLY

A. Introduction

Aladdin relies primarily upon its Opening Brief to support the issues raised on appeal. The district court abused its discretion by not considering Aladdin's significant efforts to locate and return the defendant pursuant to Idaho Criminal Rule ("I.C.R.") 46(h)(1) and 46(h)(1)(B).

This brief is offered to clarify the argument that the court erred in failing to consider Aladdin's efforts to locate and return Defendant Wharton pursuant to I.C.R. 46(h)(1).

B. The District Court Erred in Not Considering Aladdin's Efforts to Locate and Return the Defendant.

The state argues the Court should dismiss Aladdin's argument that the district court erred in failing to consider Aladdin's efforts to return the defendant as an unenumerated relevant factor under I.C.R. 46(h)(1). The state provides no substantive rebuttal to this argument, but instead argues Aladdin failed to preserve such argument.

The state's argument fails. The case presently before the court differs from cases cited to by the state such as *State v. Perry*, wherein the criminal defendant failed to properly object to alleged prosecutorial misconduct. *State v. Perry*, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010).

Here, pursuant to its motion to exonerate, Aladdin timely asked the Court to consider Aladdin's efforts to secure Defendant Wharton's apprehension and return to Idaho in determining if justice required the forfeiture of the bond. At the motion hearing set in this matter, Aladdin presented substantial evidence detailing significant efforts expended by Aladdin in an attempt to relocate and apprehend Defendant Wharton. Aladdin then argued, inter alia, that "the factors that are to be considered by the Court when determining whether or not justice requires that the forfeiture be set aside, those factors are fairly and clearly articulated by Idaho Criminal Rule 46." Tr., p. 16, L. 11-15. Aladdin's argument on appeal now asks this Court to

find the district court erred by refusing to consider Aladdin's actions as required by I.C.R. 46.

III. CONCLUSION

For the reasons set forth in the Opening Brief and above, Aladdin asks this Court to reverse the district court's order and remand for further proceedings.

Respectfully submitted this 27th day of February, 2017.

/s/Christopher Sherman
Christopher D. Sherman
Attorney for Aladdin/Two Jinn, Inc.

CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es):

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Dated and certified this 27th day of February, 2017.

/s/Christopher Sherman
Christopher Sherman